

DEPARTMENT OF STATE REVENUE

03-20170217R.ODR

**Final Order Denying Refund: 03-20170217R
Withholding Tax
For Tax Year 2016**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Company is liable for collection fees as it failed to file its withholding return timely and failed to timely respond to Department's notices regarding the assessment.

ISSUE

I. Tax Administration - Collection Fees.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Taxpayer seeks a refund of collection fees imposed due to a levy of Indiana withholding tax.

STATEMENT OF FACTS

Taxpayer is an out-of-state company with employees in Indiana. Historically, Taxpayer has filed monthly withholding tax returns with this state. Taxpayer did not timely file its withholding tax return for the month of May, 2016. Because the return was late, the Indiana Department of Revenue ("Department") issued Taxpayer a Proposed Assessment ("AR-80") of tax liability for the missing return in the amount of \$17,423.62, which included penalties and interest. The AR-80 was issued on August 15, 2016. On the face of the AR-80, Taxpayer was instructed to either "pay the amount owed no later than October 14, 2016, or you may protest this tax assessment within [sixty] days" Taxpayer did not pay the amount due or protest within sixty days, thus, the Department issued a Demand Notice ("AR-40") for the liability on November 9, 2016.

Meanwhile, on September 30, 2016, Taxpayer sent the Department an Indiana Business Tax Closure Request ("BC-100) to close its withholding account effective May 31, 2016. Because Taxpayer did not respond to the AR-40, the tax liability went to the warrant stage. On January 13, 2017, Taxpayer's bank account was levied to collect a total of \$20,977.08. Taxpayer filed its May 2016 withholding tax return on February 13, 2017.

Taxpayer filed a Claim for Refund ("GA-110L") with the state on March 10, 2017. On the GA-110L Taxpayer requested a refund of \$17,525.21 as "5/31/2016 Payroll Withholding was paid and return was filed[.]" On April 4, 2017 the Department granted Taxpayer a refund of \$14,073.34 but denied \$3,451.87 because that amount "was allocated to collection fees that are nonrefundable." Despite this denial, the Department refunded Taxpayer the entire tax liability of \$17,525.21 requested in two separate checks. This amount represents base tax, penalty and interest. The remaining amount levied from Taxpayer's bank account represents nonrefundable collection fees of \$3,451.87.

On April 7, 2017 Taxpayer timely protested the refund denial. Taxpayer chose to waive its right to a hearing and asked that a decision be made based on its written protest and any documentation submitted with the protest. This Final Order Denying Refund results. Additional facts will be provided as necessary.

I. Tax Administration - Collection Fees.

DISCUSSION

On August 15, 2016, the Department issued an AR-80 for unpaid withholding tax liability in the amount of \$17,423.62. Taxpayer did not respond to the AR-80 or the subsequently issued AR-40, thus, on January 13, 2017 its bank account was levied for \$20,977.08. Taxpayer filed a GA-110L for \$17,525.21, which, though initially

partially denied by the Department, was refunded in full on April 4, 2017. Taxpayer filed a protest on April 7, 2017 for the remaining \$3,451.87 which represents collection fees.

If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, the Department shall propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b). All tax assessments are prima facie evidence that the Department's claim for unpaid tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). The amount of the proposed assessment "is considered a tax payment not made by the due date" and is subject to penalties and interest. *Id.* Notice of the proposed assessment shall be sent to the taxpayer stating that it has sixty (60) days in which to pay the assessment or file a written protest. IC § 6-8.1-5-1(b) and (d). If the taxpayer does not pay the proposed assessment or file a written protest in the sixty (60) day period "[t]he department shall demand payment, as provided in IC § 6-8.1-8-2(a), of any part of the proposed tax assessment, interest, and penalties" IC § 6-8.1-5-1(j). In these situations, the Department "shall make the demand for payment in the manner provided in IC § 6-8.1-8-2." IC § 6-8.1-5-1(k).

IC § 6-8.1-8-2 provides that the Department must issue a demand notice for payment which grants the taxpayer a ten (10) day period of time in which to "either pay the amount demanded or show reasonable cause for not paying the amount demanded." IC § 6-8.1-8-2(a). If a taxpayer "does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs," and other fees. IC § 6-8.1-8-2(b). When it has issued a tax warrant, the Department may contract with a collection agency to collect delinquent tax plus interest, penalties, collection fees, and other fees and costs. IC § 6-8.1-8-4(a). Additionally, "a collection fee of ten percent (10 percent) of the unpaid tax is added to the total amount due." *Id.* When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e).

In this case, Taxpayer failed to file its May 2016 withholding tax return in a timely manner. The Department issued an AR-80 for the unpaid tax which Taxpayer did not pay or protest. Though Taxpayer did file a BC-100 to close its withholding account, this is not a proper venue to protest the AR-80. Thus, the Department issued an AR-40 demanding payment of the tax liability. When Taxpayer failed to respond to the AR-40, the liability went to warrant and the Department's third party collection agency collected the liability plus collection fees via levy of Taxpayer's bank accounts. Taxpayer now argues that the "[c]ollection [f]ees are excessive based on actual filing amount" Taxpayer goes on to show that in the fourteen months prior to May 2016, its withholding tax liability never exceeded \$300. However, as noted above, once a proposed assessment has been issued, it is "prima facie evidence that the Department's claim for unpaid tax is valid."

The Department followed statutory procedure each step of the way. The liability went to warrant, the Department's third party collection agency levied Taxpayer's bank account and retained fees of \$3,451.87 for their efforts. Though the Department refunded Taxpayer in full for the base tax, penalty and interest, the collection fees were not retained by the Department and, therefore, in the absence of Department error, the Department is not able to refund the collection fees.

FINDING

Taxpayer's protest is respectfully denied.

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